

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOEL BURKETT,

Plaintiff,

v.

RENE BAKER, et. al.,

Defendants.

3:13-cv-00300-MMD-WGC

ORDER

Re: Doc. # 20

Before the court is Plaintiff's Motion to Strike. (Doc. # 20.)¹ Defendants have filed a response (Doc. # 21) and Plaintiff filed a reply (Doc. # 22).

I. BACKGROUND

At all relevant times, Plaintiff Joel Burkett was in custody of the Nevada Department of Corrections (NDOC). (Pl.'s Compl., Doc. # 4.) Plaintiff, a pro se litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) The events giving rise to this action took place while Plaintiff was housed at Ely State Prison (ESP). (*Id.*) Defendants are ESP Warden Rene Baker, NDOC Director Greg Cox, and NDOC Deputy Director Endel McDaniel. (*Id.*)

On screening, Plaintiff was allowed to proceed with a single claim for due process based on his continued classification as a high risk potential (HRP) and indeterminate confinement in close housing at ESP. (Screening Order, Doc. # 3.)

Defendants have filed a motion for summary judgment, which the court is addressing via separate report and recommendation. (Doc. # 15.) Plaintiff moves to strike Exhibits A and F, filed by Defendants in support of their motion for summary judgment. (Doc. # 18.) Specifically, he contends that they contain the statements "Burkett stabbed a inmate in New Mexico" and a "cigarette kingpin", which he contends constitute inadmissible hearsay. (*Id.*)

¹ Refers to court's docket number.

Defendants point out that Exhibit A to their motion is a true and correct copy of a NOTIS Case Note Report, and Exhibit F contains true and correct copies of HRP classification status forms. (Doc. # 21 at 1.) Defendants argue that Plaintiff cites no authority or analysis as to why Exhibits A and F contain inadmissible hearsay. (*Id.* at 2.) They cite Federal Rule of Evidence 801(c), which provides that hearsay is a statement "other than one made by the declarant while testifying at the trial or hearing, offered in evidence **to prove the truth of the matter asserted.**" (*Id.* (emphasis original in Defendants' brief).) They maintain that the statements pointed to by Plaintiff are not offered to prove that Plaintiff stabbed an inmate in New Mexico or that he was a "cigarette kingpin." (*Id.*) Instead, they are offered to show that Plaintiff received due process and to demonstrate the reasons justifying his continued placement on HRP status. (*Id.* at 3.) They further argue that the documents come within the business records exception to the hearsay rule. (*Id.*)

In his reply, Plaintiff asserts that Defendants attempt to use these statements for an impermissible purpose, and do seek to utilize the statements to prove the truth of the matters asserted. (Doc. # 22 at 2-3.)

II. LEGAL STANDARD

While Federal Rule of Civil Procedure 12(f) provides authority for the court to strike "redundant, immaterial, impertinent, or scandalous matter" from a *pleading*, it does not authorize the court to strike material contained in other documents filed with the court. *See* Fed. R. Civ. P. 12(f). Courts, however, have inherent powers to control their dockets, *see Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the orderly and expeditious disposition of cases." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43 (1991). "This includes the power to strike items from the docket as a sanction for litigation conduct." *Ready*, 627 F.3d at 404 (citations omitted); *see also Wallace v. U.S.A.A. Life General Agency, Inc.*, 862 F.Supp.2d 1062, 1068 (D. Nev. 2012) (citing *Ready*, 627 F.3d at 404). "Such power is indispensable to the court's ability to enforce its orders, manage its docket, and regulate insubordinate...conduct." *Id.* (citing *Mazzeo v. Gibbons*, No. 2:08-cv-01387-RLH-PAL, 2010 WL 3910072, at * 2 (D. Nev. Sept. 30, 2010)).

III. DISCUSSION

Defendants are correct that a statement is not hearsay if it is not offered to prove the truth of the matter asserted in the statement. Fed. R. Evid. 801(c)(2). The court agrees with Defendants that these statements were not offered to prove that Plaintiff stabbed an inmate in Mexico or that he was a "cigarette kingpin." Instead, they are offered to substantiate the decision to keep Plaintiff on HRP status. Accordingly, Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.

Dated: November 25, 2014.



WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE